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CompTel Reply Comments
BellSouth Louisiana

SUMMARY

With the exception of a few sister BOCs, virtually all of the parties filing comments agree with CompTel that BellSouth has not satisfied Section 271's requirements. In particular, and most importantly, many commenters (including DOJ) agree with CompTel that BellSouth continues to limit new entrants to unnecessary and inefficient collocation-based methods of combining UNEs, thereby violating the 1996 Act and the Eighth Circuit's ruling. CompTel submits this Reply to respond to the claims of Ameritech and U S West that BellSouth's obstruction of local competition through costly and cumbersome collocation procedures is permissible and satisfies Section 271's requirements.

1.) Two other BOCs – U S West and Ameritech – contend in their comments that the offering of collocation alone is sufficient to fulfill BellSouth's obligations with respect to UNE unbundling. This contention is simply incorrect. As DOJ concluded in its Evaluation, a BOC's insistence upon collocation-based access methods "will inevitably slow the process of competitive entry, raise the cost of entry, and impair the quality of services by carriers seeking to combine UNEs." BellSouth's refusal to provide other access methods is "the most likely explanation for the virtual absence of such competition in Louisiana." To meet its requirements with respect to UNE unbundling, BellSouth must provide, *in addition* to collocation, electronic separation and combination of network elements. The "recent change" process, used today by BellSouth and other BOCs to electronically separate portions of their own networks, is an alternative that CompTel and others submit can be used to fulfill a BOC's obligation to provide nondiscriminatory access to UNEs.

2.) Further, BellSouth still has not satisfied “Track A” of Section 251(c)(1). Not only are there no wireline facilities-based competitors serving residential customers (due largely, as DOJ concluded, to BellSouth’s failure to open its markets to UNE-based competition), but there also are no PCS-based service providers that operate as “competing providers” under Track A. In Louisiana, PCS is not yet an actual competitive alternative for any substantial portion of the general population. Thus, the Commission cannot approve BellSouth’s second application.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Second Application of)	CC Docket No. 98-121
BellSouth Corp. <u>et al.</u>)	
for Provision of In-Region,)	
InterLATA Services in Louisiana)	

**REPLY COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully submits the following Reply in response to comments on the second application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively, "BellSouth") for authority to provide in-region, interLATA services in Louisiana. In its initial comments,¹ CompTel explained that BellSouth still falls far short of Section 271's standard because, despite some minor modifications and a few cosmetic changes, BellSouth has resubmitted essentially the same application that was previously rejected.² The vast majority of parties filing comments agreed with CompTel's assessment and recommended that this application, like the one before it, should be denied.

CompTel submits this Reply to respond to the few sister BOCs who claim BellSouth has satisfied Section 271's requirements. Specifically, CompTel responds to

¹ Opposition of the Competitive Telecommunications Association, CC Docket No. 98-121, filed August 4, 1998 ("CompTel Opposition").

² See *Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Louisiana*, CC Docket No. 97-231, Memorandum Opinion and Order, FCC 98-17 (rel. Feb. 4, 1998)("BellSouth Louisiana Order").

the claims of both Ameritech and U S West that BellSouth's obstruction of local competition through costly and cumbersome collocation procedures is permissible and satisfies Section 271's requirements.³ To the contrary, as the Department of Justice ("DOJ") emphasized in its Evaluation, BellSouth in fact has failed to fully and irreversibly open the Louisiana market precisely because it has not complied with its interconnection obligations to competitors using unbundled network elements ("UNEs").⁴ Collocation alone does not fulfill BellSouth's obligation to provide access to UNEs so as to enable new entrants to combine those elements to develop competing local services. BellSouth can satisfy its obligations with respect to UNE unbundling (and thereby comply with item (ii) of the competitive checklist)⁵ only if it provides, in addition to collocation, electronic separation and combination of network elements. One currently available electronic alternative, the "recent change" process, would enable BellSouth to meet its statutory UNE access requirement. BellSouth has only offered collocation, and thus, its application must fail.

Furthermore, CompTel responds to US West's assertion that BellSouth satisfies "Track A" of Section 271(c)(1). Because no carrier provides facilities-based wireline service to *any* residential customer in Louisiana, BellSouth does not face any predominantly facilities-based competitors among traditional wireline service providers. Moreover, BellSouth's attempt to rely on PCS-based service providers also does not

³ See Comments of Ameritech on Second Application by BellSouth to Provide In-Region, InterLATA Services in Louisiana ("Ameritech Comments") and Comments of U S West Communications, Inc. on Second Application by BellSouth to Provide In-Region, InterLATA Services in Louisiana ("U S West Comments"), CC Docket No. 98-121, filed August 4, 1998.

⁴ Evaluation of the United States Department of Justice, CC Docket No. 98-121, filed August 19, 1998 ("DOJ Evaluation") at n.5.

⁵ 47 U.S.C. § 271(c)(2)(B)(ii).

satisfy Track A, at least for the near term. In Louisiana, PCS has not yet become a substitute for local wireline service for any substantial portion of the general population. For these reasons, the Commission cannot approve BellSouth's application.⁶

I. BELLSOUTH REFUSES TO PROVIDE NONDISCRIMINATORY ACCESS FOR COMBINING UNES

BellSouth persists in refusing to offer any means of separating and combining network elements other than collocation -- the method that "requires the *most* manual work and is the *most labor-intensive* method that can be contrived."⁷ Electronic separation such as through the "recent change"⁸ feature of BellSouth's own network, on the other hand, is not only more efficient but statutorily required. In its Opposition, CompTel showed that physical separation and collocation is not sufficient to fully satisfy the 1996 Act. Access to an electronic separation such as the "recent change" functionality is necessary, *inter alia*, to satisfy the Act's requirement that entrants be able to provide telecommunications services *completely* through access to the ILEC's

⁶ As stated in CompTel's Opposition, there are several other reasons why BellSouth's application falls short of Section 271's requirements, including that BellSouth has not corrected the deficiencies previously identified in its OSS access; that it has not provided information to enable the Commission to judge the parity of access to other OSS functionalities; and that grant of the application is not consistent with the public interest.

⁷ Affidavit of Robert V. Falcone on Behalf of AT&T Corp., CC Docket No. 98-121, ("Falcone Aff.") at ¶ 10 (emphasis added).

⁸ Through the "recent change" functionality, network elements can be electronically separated (or unbundled) from each other and from the rest of the network. Once so unbundled, CLECs can then access the "recent change" feature to combine those elements in order to provide telecommunications service. Such access is used by the BOCs for their own operations and is required by Section 251(c).

unbundled elements. Because BellSouth is not providing this type of access, its application must fail.

The Commission has repeatedly emphasized the importance of UNE-based entry, and, in particular, a new entrant's ability to provide competing services *solely* through the use of UNEs. In the *BellSouth South Carolina Order*, for example, the Commission found that: "the ability of new entrants to use unbundled network elements, as well as combinations of unbundled network elements, is *integral* to achieving Congress' objective of promoting competition in the local telecommunications market."⁹ In order for new entrants to have this ability, the Commission continued, BOCs must comply "in a manner that allows competing providers to combine such network elements."¹⁰ In the *Ameritech Michigan Order*, the Commission also noted that an essential prerequisite, in fact a "salient feature," of local competition is the "BOCs' cooperation in the nondiscriminatory provisioning of interconnection, unbundled network elements and resold services. . . ."¹¹

Indeed, the Eighth Circuit's decision in *Iowa Utilities Board* upheld the Commission's determination that new entrants must be able to provide telecommunications services without deploying their own facilities and using *only* UNEs

⁹ *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, FCC 97-418 (rel. Dec. 24, 1997) ("*BellSouth South Carolina Order*") at ¶ 195.

¹⁰ *Id.* at ¶ 196.

¹¹ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region InterLATA Services in Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543 (1997) ("*Ameritech Michigan Order*") at ¶ 14.

obtained from the ILEC.¹² The only issue left open after *Iowa Utilities Board* is how a BOC will provide the access necessary to allow entrants to use UNEs in this manner.¹³

In its Evaluation in this proceeding, DOJ concurs with these assessments of the importance of efficient access to UNEs. DOJ notes that Congress viewed UNEs “as one of the principal options for competitors” and that the availability of efficient means for combining UNEs is “*very important* to the development of competition in all segments of the market.”¹⁴ DOJ further explained that BellSouth’s policies are impeding the development of competition through the use of UNEs:

The Department has concluded that local markets in Louisiana are not open to such competitive UNE entry. BellSouth’s policy of requiring carriers that wish to combine network elements to collocate connecting equipment (such as a distribution frame) imposes unnecessary costs on competing carriers, impairs the ability of competing carriers to provide reliable service, and will substantially delay entry. These additional costs and delays put potential entrants at a clear competitive disadvantage vis-à-vis BellSouth and are the most likely explanation for the virtual absence of such competition in Louisiana.¹⁵

BellSouth’s collocation policy “will inevitably slow the process of competitive entry, raise the cost of entry, and impair the quality of services by carriers seeking to combine UNEs.”¹⁶ Accordingly, DOJ recommends denial of BellSouth’s second application for Louisiana.

¹² *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 814 (8th Cir. 1997), *modified on reh’g*, No. 96-3321 (Oct. 14, 1997), *cert. granted*, 118 S. Ct. 879 (Jan. 26, 1998) (“*Iowa Utilities Board*”) (emphasis added).

¹³ DOJ notes as well that the Eighth Circuit did not specifically address the required mode of access and manner of UNE combination. (DOJ Evaluation at n. 17.)

¹⁴ DOJ Evaluation at 9, citing DOJ South Carolina Evaluation at 24 (emphasis added).

¹⁵ DOJ Evaluation at 10.

¹⁶ *Id.* at 12. DOJ notes that establishing the necessary collocations for a statewide rollout of service could take up to four years for a state such as Louisiana. *Id.*

Further, DOJ agrees with CompTel and most other commenters that BellSouth's position does not comply with the Eighth Circuit's ruling. As DOJ notes, *Iowa Utilities Board* assumes that "CLECs would have access to incumbents' networks in order to do the necessary combining of UNEs" and requires that CLECs be able to "provide service entirely through the use of UNEs, and [not be] required to deploy their own facilities in order to combine UNEs."¹⁷ BellSouth's collocation policy, however, requires CLECs to deploy duplicative facilities (including a distribution frame) in order to use UNEs, which clearly contradicts the Eighth Circuit's holding. Moreover, the introduction of unnecessarily duplicative facilities degrades service by requiring a physical disruption of service to customers switching carriers and increasing the potential failure points in a CLEC's network architecture.¹⁸

Ameritech submits that physical collocation is "the *only* authorized method" for requesting carriers to combine UNEs.¹⁹ Ameritech's argument is premised entirely on the fact that collocation is specifically mentioned in Section 251(c)(6), while Section 251(c)(3)'s access methods are undefined.²⁰ This argument misses the mark. Section 251(c)(3) requires BellSouth to provide access "at any technical feasible point," and "in a manner that allows requesting carriers to combine such elements."²¹ The "access" in this provision is ambiguous, and thus, the Commission has discretion to require any method that satisfies the statutory purposes. As CompTel explained in its initial comments, access to UNEs through the "recent change" functionality is consistent with Section

¹⁷ *Id.* at 14-15, citing *Iowa Utilities Board* at 813, 815.

¹⁸ *Id.* at 14.

¹⁹ Ameritech Comments at 14.

²⁰ *Id.* at 15.

²¹ 47 U.S.C. § 251(c)(3).

251(c)(3)'s unbundling requirements, and is the only method proposed which would allow new entrants to combine UNEs without having to deploy their own facilities. Thus, it is within the Commission's discretion to require the availability of the "recent change" functionality as a means of accessing UNEs pursuant to Section 251(c)(3).²²

Further, CompTel agrees with AT&T that BellSouth's objection to the "recent change" approach is without merit.²³ First, BellSouth's argument - that the Eighth Circuit's decision does not allow electronic UNE combination - is based upon a misreading of that decision. Unlike the collocation-based method BellSouth requires, "recent change" allows CLECs to provide service *solely* through the ILEC's UNEs without having to own or control any part of the ILECs network.²⁴ Second, BellSouth's argument - that "recent change" is inconsistent with the ILECs' preservation of control over its network - is also without merit. Because access to the "recent change" functionality "would preserve incumbent LEC control over the switch, there is no more legitimate basis for concerns about 'network security and reliability' with recent change. . . ."²⁵ Thus, BellSouth's refusal to consider methods of combining UNEs other than collocation is not only harmful and inefficient from an engineering perspective, but also in violation of the Eighth Circuit's decision.

Just last week, in fact, the Kentucky Public Service Commission ("PSC") rejected the updated Statement of Generally Available Terms ("SGAT") submitted by BellSouth

²² CompTel's proposed method of access, through the "recent change" functionality, does not involve any permanent physical occupation of the ILEC's premises, and therefore, the *Bell Atlantic* case cited by Ameritech is inapplicable. See Ameritech Comments at 15 (citing *Bell Atlantic v. FCC*, 24 F.3d 1441, 1446 (D.C. Cir. 1994)).

²³ AT&T Comments at 21-23.

²⁴ See *Iowa Utilities Board* at 814.

²⁵ AT&T Comments at 22, citing *Falcone Aff.* ¶¶ 196-200.

Telecommunications, Inc. in part because the SGAT specifies that UNEs may be combined by collocation only.²⁶ In the *Kentucky Order*, the PSC found that the collocation-only requirement not only violates the 1996 Act, but also “is both discriminatory and unwarranted.”²⁷ In concluding that the requirement that CLECs may combine UNEs only by means of collocation is unlawful, the PSC noted that there is no reason that “the ‘recent change’ capability cannot be used to provide UNEs to CLECs.”²⁸ Accordingly, the PSC essentially ordered the use of “recent change.”

II. BELLSOUTH STILL DOES NOT COMPLY WITH SECTION 271(C)(1)(A)

BellSouth claims that it has satisfied the requirements of Section 271(c)(1)(A), or, Track A.²⁹ Track A requires the presence of facilities-based competition involving one or more facilities-based providers of residential and business services, offering services “either exclusively over their own telephone exchange service facilities or predominately over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.”³⁰

Initially, the record refutes BellSouth’s claim that any wireline CLEC is providing competitive facilities-based local exchange service in Louisiana. KMC, the only carrier

²⁶ See *In the Matter of Investigation Regarding Compliance of the Statement of Generally Available Terms of BellSouth Telecommunications, Inc. with Section 251 and Section 252(d) of the Telecommunications Act of 1996*, Order, Case No. 98-348, Kentucky Public Service Commission (Aug. 21, 1998)(“*Kentucky Order*”).

²⁷ *Id.* at 7.

²⁸ *Id.* at 8.

²⁹ 47 U.S.C. § 271(c)(1)(A).

³⁰ *Id.*

BellSouth even alleged is providing facilities-based residential service, unequivocally stated in its comments that it *does not* provide facilities-based service to a single residential customer.³¹ Thus, BellSouth does not face any facilities-based competition for residential customers in Louisiana.

Second, BellSouth claims that, nevertheless, it can satisfy Track A even if *no* carrier is using any of its own facilities to serve residential customers.³² U S West supports this erroneous argument.³³ Both U S West and BellSouth, relying (incorrectly) on an Addendum filed to the DOJ's Oklahoma Evaluation, argue that Track A permits a BOC to rely on carriers using resold BOC services to serve residential customers.³⁴ In a crucial footnote in its Evaluation, DOJ corrects the BOCs' mistake:

BellSouth's reliance on the Department's Addendum is misplaced. The Department's addendum stands only for the proposition that whether an individual provider is facilities-based is to be determined based upon that provider's activities as a whole, and that a provider does not have to be both facilities-based for business customers and separately facilities-based for residential customers to satisfy Track A. It does not stand for the proposition that a facilities-based provider serving business customers and a *reseller* serving residential customers can be combined to meet the statutory requirements.³⁵

Thus, DOJ concurs with CompTel that both business and residential customers must be offered service that is provided exclusively or predominantly over the facilities of a competitor. Pure resale of one class of service – as exists with residential customers in Louisiana – does not satisfy Track A's facilities-based competitor test.

³¹ KMC Comments at 3; DOJ Evaluation at n. 12.

³² BellSouth Application at 7.

³³ U S West Comments at 3-5.

³⁴ U S West Comments at 3, citing BellSouth Application at 7. Addendum to DOJ Oklahoma Evaluation at 3, CC Docket No. 97-121 (May 21, 1997).

³⁵ DOJ Evaluation at n. 13 (emphasis in original).

BellSouth (supported by US West and Ameritech) also bases its Track A showing upon the existence of PCS carriers in Louisiana. CompTel does not argue with Ameritech that “PCS providers *can* be Track A providers”³⁶ if (as the Commission found in the *BellSouth Louisiana Order*) PCS-based services present a true competitive alternative to wireline local exchange service (*i.e.*, if PCS-based service serves as a substitute for local service for substantial portions of the general population).³⁷ However, U S West is incorrect to assert that BellSouth has satisfied Track A based upon the present state of PCS service in Louisiana. Indeed, nothing has changed since the rejection of BellSouth’s first application. PCS-based service remains an essentially mobile service, and is still not “an actual commercial alternative” to wireline local services.³⁸

U S West points to two (supposed) “dramatic developments” cited by BellSouth that relate to pricing and market research.³⁹ However, as DOJ noted in its Evaluation, the evidence suggests that PCS still is not a viable facilities-based competitor in Louisiana. “It is clear even from BellSouth’s submission,” DOJ commented, “that the vast majority of consumers do not consider PCS to be a close substitute for wireline local exchange service, and that PCS alone does not provide the full range of benefits we would expect from competitive local markets.”⁴⁰ Indeed, PCS continues to satisfy different customer

³⁶ Ameritech Comments at 3 (emphasis added).

³⁷ *BellSouth Louisiana Order* at ¶¶ 72 and 73.

³⁸ *BellSouth Louisiana Order* at ¶ 73, citing *SBC Oklahoma Order* at ¶ 14; *Ameritech Michigan Order* at 75.

³⁹ U S West Comments at 6-7.

⁴⁰ DOJ Evaluation at n. 9, citing Declaration of Carl Shapiro and John Hayes at 9-13, attached to Sprint Comments as App. B; Sprint Comments at 21-25; Declaration of William C. Denk, M/A/R/C Louisiana PCS Study, attached to BellSouth Application as App. A, Vol. 1, Tab 6.

needs than wireline service and still is priced to reflect such differences. Therefore, the PCS-based service BellSouth relies upon does not satisfy Track A.

CONCLUSION

For the foregoing reasons, BellSouth's second application for authority to provide in-region, interLATA services in Louisiana should be denied. BellSouth has neither satisfied the competitive checklist nor met the requirements of Track A. Accordingly, the Commission should deny the BellSouth request.

Respectfully submitted,

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August 28, 1998

CERTIFICATE OF SERVICE

I, Jacquelyne White, hereby certify that on this 28th day of August, 1998, I caused true and correct copies of the foregoing REPLY COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION to be served via hand delivery and U.S. mail, first-class postage prepaid, upon those persons listed below.

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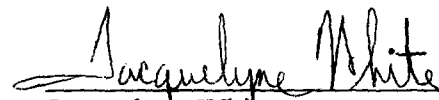
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